IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 66 (S/B) of 2003

L.K. Pant S/o Late Shri N.P. Pant
R/o Defence Colony Dehradun
Presently working as Extension Officer (Mashroom)
Horticulture Department, Dehradun

... **Petitioner**

Vs

1. State of Uttaranchal through Secretary Horticulture Department, Uttaranchal, Dehradun
2. Director Horticulture and Food Processing, Uttaranchal Udhyan Bhawan, Chabatia, Ranikhet District Almora

... Respondents

Dated: May 18, 2006

Sri Rajendra Dobhal, learned counsel for the petitioner
Sri K.P. Upadhyay, learned counsel for the respondents

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioner has prayed for a writ, in the nature of Certiorari calling for record and quash the impugned order dated 17.01.2003 (Annexure 1 to the writ petition) passed by respondent No. 2 – Director Horticulture and Food Processing, Uttaranchal.

2. Brief facts of the case as narrated by the petitioner are that the petitioner was appointed as Extension Officer Class – II in Horticulture Department on 05.04.1984 after retrenchment from the post of Officer-in-Charge, Mushroom Centre Kumaon University, Nainital. The petitioner continuously worked as Extension Officer Class-II in the Horticulture Department upto June 1998. Thereafter in June 1998, the petitioner was transferred from the post of Extension Officer Class-II Dehradun to the post of Breeder, Horticulture

Department Pithoragarh. On 31.07.2000, the respondent No. 1 – Secretary, Horticulture Department, Uttaranchal passed an order directing the petitioner to join the post of Project Coordinator at Horticulture Research Station Jeolikot, District Nainital. The petitioner worked as Project Coordinator Horticulture Research Station, Jeolikote, District Nainital upto 02.09.2002. Thereafter, vide order dated 31.07.2002, the petitioner was again transferred from Horticulture Research Station Jeolikot, District Nainital to Extension Officer Class II Mushroom at Dehradun on the post of Project Coordinator and the petitioner is working as such there. Thereafter, on 17.01.2003 Respondent No. 2 passed an order on the basis of inquiry report conducted by Chief Development Officer, and Project Economist, Nainital directing for the recovery of Rs. 10,570.80 against the petitioner. The petitioner has challenged the aforesaid order by way of this writ petition passed against him on the ground that the impugned order is a minor punishment under the C.C.A. Rules and before awarding the minor punishment, an explanation is required to be called for under Rule 10(2) of the U.P. Employees Service Manual from the delinquent officer, however no such explanation was ever called and the impugned order has been passed.

3. We have heard learned counsel for the parties and perused the entire evidence on record.

4. A perusal of the impugned order shows that the same has been passed in view of the report dated 13th December, 2002 in which it was stated that the petitioner while posted as Project Coordinator at Horticulture Research Station, Jeolikote, District Nainital supplied the sub-standard compost to the mushroom growers of below poverty line and due to the said supply, the mushroom

growers suffered loss, as mushroom could not grow upto the mark and to recover that loss, the impugned order has been passed.

5. A counter affidavit has been filed in which the statement made by the petitioner that no explanation was called for from him ever has not been denied. Therefore, the order has been passed clearly in violation of Rule 10(2) of the U.P. Employees Service Manual and cannot be sustained in the eye of law.

6. Therefore, the impugned recovery notice dated 17.01.2003 issued by Respondent No.2 so far as it relates to the petitioner is hereby quashed. The writ petition is allowed accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang